

Appl. No. 10/688,118  
Atty. Docket No. 9066M2  
Preliminary Amdt. dated June 16, 2006  
Customer No. 27752

### REMARKS

#### Claim Status

Claims 21-38 are pending in the present application. No additional claims fee is believed to be due.

Claims 1-20 are canceled without prejudice.

New claim 21 has been added to claim: a process for preparing a softening composition suitable for atomizing without excessive aerosolization. The process involves the steps of preparing a softening composition, preparing a rheology modifying composition, and adding the rheology modifying composition to the softening composition. The softening composition is an oil-in-water composition with a continuous aqueous phase and a discontinuous aqueous phase. The rheology modifying composition is a water-in-oil-emulsion with a high molecular weight polymer in a discontinuous aqueous phase and a continuous organic solvent phase. Support for the new claim is found in previously presented claim 1; page 3, lines 16-26 of the specification as originally filed.

New claim 22 has been added to provide that the continuous aqueous phase of the oil-in-water emulsion comprises less than about 45% by weight of the modified softening composition. Support for the new claim is found in previously presented claim 2; page 9, lines 28-34 of the specification as originally filed.

New claim 23 has been added to provide that the modified softening composition has from about 0.0005% to about 0.5% by weight of the high molecular weight polymer. Support for the new claim is found in previously presented claim 3; page 14, lines 31-36 of the specification as originally filed.

New claim 24 has been added to provide that the modified softening composition is applied to a paper tissue. Support for the new claim is found in previously presented claim 15; page 10, lines 16-22 of the specification as originally filed.

New claim 25 has been added to provide that the modified softening composition is applied to paper tissue at levels from about 0.1% to about 10% of the total weight of the tissue web. Support for the new claim is found on page 19, lines 7-12 of the specification as originally filed.

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New claim 26 has been added to provide that the modified softening composition is deposited as uniform, discrete surface deposits, spaced apart at a frequency between about 5 areas per lineal inch and about 100 areas per lineal inch. Support for the new claim is found in previously presented claim 17; page 19, lines 6-36 of the specification as originally filed.

New claim 27 has been added to claim: a process for making a sprayable softening composition which has the steps of preparing a softening composition, preparing a rheology modifying composition, and adding the rheology modifying composition to the softening composition. The softening composition has an oil-in water emulsion. The oil-in-water emulsion has a quaternary ammonium softening active ingredient, an electrolyte and a vehicle in which the softening active ingredient is dispersed. The water-in-oil emulsion has from about 20% to about 40% by weight of a premix of a high molecular weight polymer, from about 40% to about 50% water, and from about 20% to about 40% of an organic solvent. Support for the new claim is found in previously presented claim 4; page 3, lines 20-25 of the specification as originally filed.

New claim 28 has been added to provide that the polymer is a cationic polymer. Support for the new claim is found in previously presented claim 5; page 6, lines 10-12 of the specification as originally filed.

New claim 29 has been added to provide that the softening composition is sprayed on the surface of a paper tissue. Support for the new claim is found in previously presented claim 16; page 19, lines 6-36 of the specification as originally filed.

New claim 30 has been added to claim: a process for making a sprayable softening composition which has the steps of preparing a softening composition, preparing a rheology modifying composition, and combining the rheology modifying composition with the softening composition. Support for the new claim is found in previously presented claim 6; page 3, lines 20-25; page 14, lines 31-36 of the specification as originally filed.

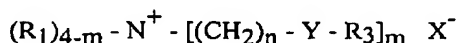
New claim 31 has been added to provide that the softening composition is sprayed on the surface of a paper tissue. Support for the new claim is found in previously presented claim 16; page 19, lines 6-36 of the specification as originally filed.

New claim 32 has been added to provide that the modified softening composition is deposited as uniform, discrete surface deposits, spaced apart at a frequency between about 5 areas per lineal inch and about 100 areas per lineal inch. Support for the new claim is found in previously presented claim 17; page 19, lines 6-36 of the specification as originally filed.

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New claim 33 has been added to provide that the softening active ingredient is selected from the group consisting of quaternary compounds, mono-, di-, and tri-ester quaternary ammonium compounds, and mixtures thereof. Support for the new claim is found in previously presented claim 7; page 7, lines 9-14 of the specification as originally filed.

New claim 34 has been added to provide that the softening active ingredient is a mono-, di-, or tri-ester quaternary ammonium compound having the formula:



where Y is -O-(O)C-, or -C(O)-O-, or -NH-C(O)-, or -C(O)-NH-; m is 1 to 3; n is 0 to 4; each R<sub>1</sub> is a C<sub>1</sub>-C<sub>6</sub> alkyl or alkenyl group, hydroxyalkyl group, hydrocarbyl or substituted hydrocarbyl group, alkoxyated group, benzyl group, or mixtures thereof; each R<sub>3</sub> is a C<sub>13</sub>-C<sub>21</sub> alkyl or alkenyl group, hydroxyalkyl group, hydrocarbyl or substituted hydrocarbyl group, alkoxyated group, benzyl group, or mixtures thereof; and X<sup>-</sup> is any softener-compatible anion. Support for the new claim is found in previously presented claim 8; page 8, lines 9-25 of the specification as originally filed.

New claim 35 has been added to provide that m is 3, n is 2, R<sub>1</sub> is methyl, R<sub>3</sub> is C<sub>15</sub> C<sub>17</sub> alkyl or alkenyl, and Y is -O-(O)C-, or -C(O)-O-. Support for the new claim is found in previously presented claim 9; page 8, lines 17-25 of the specification as originally filed.

New claim 36 has been added to provide that the modified softening composition has from about 2% to about 75% by weight of a plasticizer. Support for the new claim is found in previously presented claim 10; page 11, lines 1-3 of the specification as originally filed.

New claim 37 has been added to provide that the electrolyte has up to 15% by weight of an electrolyte. Support for the new claim is found in previously presented claim 11; page 10, lines 8-10 of the specification as originally filed.

New claim 38 has been added to provide that the modified softening composition has from about 1% to about 20% by weight of the composition of a bilayer disrupter. Support for the new claim is found in previously presented claim 12; page 11, lines 6-14 of the specification as originally filed.

It is believed that new claims 21-38 do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

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Rejection Under 35 USC §103(a) Over WO 02/48458 in View of U.S. 3,624,019

Claims 1-20 were previously rejected under 35 U.S.C. §103(a) over Barnholtz et al (WO 02/48458 – hereinafter “Barnholtz”) in view of Anderson (U.S. 3,624,019 – hereinafter “Anderson”). Applicants respectfully traverse this rejection. The combination does not render the present claims obvious under 35 U.S.C. §103(a) because one of ordinary skill in the art would not have a reasonable expectation of success of obtaining the claimed invention based upon the combination of Barnholtz in view of Anderson. MPEP §2142, §2143; *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

A. There is no reasonable expectation of success of obtaining the claimed invention

One of ordinary skill in the art would not expect a reasonable expectation of success of arriving at the claimed invention by combining the teachings of Anderson and Barnholtz. Anderson teaches that polymers can be used in solution for their “thickening and flocculating properties.” (Anderson, col. 1, line 6). However, Barnholtz discloses that “compositions having a high viscosity are difficult to apply to tissue webs for softening purposes.” (Barnholtz, p. 20, lines 30-34). Thus, one of ordinary skill in the art would not have a reasonable expectation of arriving at the claimed invention by combining the water-in-oil emulsion taught by Anderson with the invention taught by Barnholtz because Barnholtz specifically states that a high viscosity is undesirable for the purposes of that invention and the water-in-oil emulsion of Anderson contains polymers that are said to have a thickening quality in solutions.

In addition, one of ordinary skill in the art would not expect the water-in-oil emulsion taught in Anderson to invert in the oil-in-water emulsion taught in Barnholtz. For inversion of the water-in-oil emulsion to occur, the concentration of water must be sufficiently high. Miller, D. J.; Henning, T.; Grunbein, W; Phase inversion of W/O emulsions by adding hydrophilic surfactant – a technique for making cosmetic products, *Colloids and Surfaces A: Physicochemical and Engineering Aspects*, Volumes 183-185, 15 July 2001, pp. 681-688, p. 687. Anderson discloses inverting the water-in-oil emulsions taught in *water* with 0.01 to 50 percent surfactant (based on the amount of polymer) (Anderson, col. 4, lines 9-14). In other words, Anderson teaches using an exceptionally high concentration of water whereas Barnholtz teaches an aqueous composition with a lower concentration of water due to the presence of a softening active ingredient (Barnholtz, p. 15, lines 24-25), electrolyte (Barnholtz, p. 21, lines 14-15), optional plasticizer (Barnholtz, p. 19, lines 14-17), optional bilayer disruptor (Barnholtz, col. 22, lines 27-28). Thus, one of ordinary skill in the art would not have a reasonable expectation of success of combining

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the teachings of Anderson with the teachings in Barnholtz because Barnholtz teaches a much lower water concentration as compared to Anderson.

Therefore, one of ordinary skill in the art would not expect a reasonable expectation of success of arriving at the claimed invention by combining the teachings of the prior art. As a result, the obviousness rejection is improper and should be withdrawn.

#### Conclusion

In light of the above remarks, it is requested that the Examiner reconsider the application. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 21-38 is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By

  
Signature

Date: June 16, 2006  
Customer No. 27752

Peter T. Nguyen  
Registration No. 58282  
(513) 634-4268